IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

SECOND APPEAL NO. 271/2005

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : September 14, 2006

Heard Mr. Sohoni, learned counsel for the appellant and Mr. Joshi, learned counsel for respondent no.1.

The appellant who is original defendant no.1 in a suit filed by respondent no.1 for specific performance against the appellant-respondent no.2 challenges judgment and decree dated 29.3.2004 passed by Additional District Judge, Akola in Regular Civil Appeal No.112/2002. The suit was filed for specific performance of agreement dated 4.12.1998 entered into between the parties. The suit was contested by the defendant. The defence of the defendant was two fold; firstly, that the

transaction was money lending transaction and secondly, the property mentioned in the agreement was ancestral property. The trial Court negatived the defence and granted specific performance of agreement. The trial Court also ordered that if the defendants were unable to execute the sale deed which was beyond their control, the defendants shall refund the amount with interest thereon till its realization. The appeal preferred by the appellant was dismissed by the lower appellate Court upholding the findings given by the trial Court.

Mr. Sohoni, learned counsel for the appellant submitted that both the Courts below have not appreciated the evidence in correct perspective thereby rendering the judgments unsustainable. According to learned counsel, the findings recorded by the Courts below are contrary to the evidence on record and as such perverse.

Per contra, Mr. Joshi, learned counsel for respondent no.1 submitted that

the findings recorded by the Courts below are borne out from the evidence on record and no interference is called for in the second appeal.

I have considered the submissions made by learned counsel for the parties. I have also perused the records. Upon careful perusal of the records, I am not inclined to accept the submissions made by Mr. Sohoni. In my opinion, the findings recorded by both the Courts below, are borne out from the evidence on record. Therefore, it cannot be said that the findings recorded by both the Courts below are perverse. There are concurrent findings recorded by both the Courts below against the appellant. In any event, no substantial question of law is involved in the present appeal. Hence, the appeal is rejected.

JUDGE

A.